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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,893	11/13/2003	Dae-Sung Han	1594.1295	6097

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,893

Applicant(s)

HAN ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 7/15/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/4/04 and 7/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/15/2005 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 8 as amended now includes a recitation that the heat reflecting units have a heat reflecting surface that is "cooled by the water" in an attempt to structurally distinguish applicant's claims. However, applicant's application as originally filed did not discuss or disclose any cooling of a surface of the heat reflecting unit by water. The only cooling mentioned comes from air

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admitted to the cooking apparatus via ventilation holes. The new matter must be removed from the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-6 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,508,024 to Perkins ("Perkins") in view of U.S. Patent No. 6,125,838 to Hedgpeth ("Hedgpeth").

Perkins discloses in Figures 1-7 a cooking apparatus similar to that described in applicant's claims 1-6 and 9-17. In particular, Perkins shows at least one heating unit (71), a

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grill unit (76) and a cover (62) defining a cooking space thereunder and having an air ventilation structure (64) located in a top portion of the cover to ventilate air out of the cooking space (see Fig. 5). In regard to the recitation of the claims that the air outlet holes range from 5% to 25% of an effective area of the grill unit, as shown in Figs. 4 and 5 the air ventilation holes appear to lie within this recited range. However, even if the area of these holes is not considered to be in the recited range, it is noted that Perkins specifically discloses that the amount of ventilation is selectable to control the rate of cooking and amount of smoke exhausted (see col. 6, lines 1-13 and prior discussion of exhaust ports 43, col. 4, lines 49-68). Therefore, to have selected a specific percentage of outlet area would be simply a matter of optimizing the exhaust port size of the prior art outlets of Perkins obtainable through routine experimentation and is not considered to be patentably distinct. See MPEP § 2144.05(II)(A).

In regard to the limitation that the ventilation structures serves as a “primary conduit of air,” this limitation is simply a statement of the intended use of the ventilation structure. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case the limitation does not serve to structurally distinguish the applicant’s ventilation holes from those shown in Perkins. The holes of Perkins are capable of providing the necessary air, including primary air, to the cooking space and therefore meet the limitations of applicant’s claims.

Perkins possibly does not disclose an air ventilation structure to ventilate air into the cooking space that is located on the cover and specifically a side portion of the cover

Hedgpeth teaches a cooking apparatus that is analogous to that of Perkins. In Hedgpeth, a plurality of adjustable intake air ventilation ports (76) (see Fig. 2) are located on the side of a cover (24) of the cooking apparatus.

In regard to the limitations of the claims that the air ventilation structure allows the temperature of the cooking space to be maintained below 260 degrees C., both Perkins and Hedgpeth teach that their ventilation holes are adjusted to control the temperature of the cooking space (see Perkins, col. 4, lines 51-52 and Hedgpeth, col. 7, lines 3-6). Therefore, to have selected a specific temperature to maintain the cooking space at would be simply a matter of optimizing the temperature adjustment of the prior art obtainable through routine experimentation and is not considered to be patentably distinct. See MPEP § 2144.05(II)(A).

Therefore, in regard to claims 1-6 and 9-17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cover of Perkins to incorporate the air intake ventilation holes of Hedgpeth allow for regulation of the air intake to desirably control cooking chamber temperature (see Hedgpeth, col. 7, lines 3-11). The placement of air intake holes in the cover being preferable to the air intake holes located in the base, such as shown in Perkins, because the base location is understood to potentially cause flame burn out (see Hedgpeth, col. 1, line 17-24)

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7. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Hedpeth as applied to claims 1 and 9 above, and further in view of U.S. Patent No. 5,189,945 to Hennick ("Hennick") (cited by applicant).

Perkins in view of Hedpeth teach all the limitations of claims 7 and 19 except for a pair of water tanks and a plurality of grilling pipes communicating with the water tanks.

Hennick discloses in Figures 1-17 a cooking apparatus that is considered analogous to that of Perkins. In Hennick, the cooking apparatus includes a heating unit (2), and a grill unit having a plurality of grilling pipes (12) communicating with a pair of water (19) tanks to allow flow of water through the pipes (see col. 5, lines 17-42).

Therefore, in regard to claims 7 and 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking apparatus of Perkins to incorporate the water tanks and grilling pipes of Hennick as these structures desirably aid in the cleaning grill components and prevent the undesirable occurrences of grease burning on the cooking surface and food sticking to the cooking surface (see Hennick, col. 3, lines 55-66).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Hedpeth, as applied to claim 1 above, and further in view of UK Patent No. 2 286 111 ("111 UK Patent") (cited by applicant).

Perkins in view of Hedpeth teach all the limitations of claim 8 except for a heat reflecting unit containing water therein to prevent materials dropped from the food from being burned.

The '111 UK Patent discloses in Figures 1-7 a cooking apparatus considered to be in the same field of endeavor as Perkins. In the '111 UK Patent, the cooking apparatus comprises at least one heating unit (23), a grill unit (14), and a heat-reflecting unit that includes two reflectors (24) connected to one another by a reservoir (15) containing water that receives materials dropping from the food on the grill unit (see item 15 and page 2, lines 6-9). The examiner considers that the reflectors (24) are part of a reflector unit that includes both reflectors (24) and the water containing reservoir (15) therebetween. Further, the examiner considers that a surface of the reflector unit would be cooled by the water in the reservoir (15).

Therefore, in regard to claim 8, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking apparatus of Perkins to incorporate the heat reflecting unit with water reservoir as shown in the '111 UK Patent to desirably make the heating device more efficient (see the '111 UK Patent, page 3, lines 7-11) and to receive and dispose of materials dropping from the food located on the grill (see the '111 UK Patent, page 2, lines 6-9).

Response to Arguments

9. Applicant's arguments filed 7/15/2005 have been fully considered but they are not persuasive. As noted above, the amendments do not serve to structurally distinguish applicant's claims over the prior art of record.

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Conclusion

10. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR


1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
August 2, 2005


JOSIAH COCKS
PRIMARY EXAMINER
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